UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA & STATE OF NEW YORK, Plaintiffs,	
v.	Civil Action No. 1:17-CV- 00470 (BKS/DJS)
MPM SILICONES, LLC, Defendant.	

JOINT STIPULATION OF SETTLEMENT AND ORDER

WHEREAS, the United States and the State of New York commenced this civil action, on behalf of the United States Environmental Protection Agency ("EPA") and the New York State Department of Environmental Conservation ("DEC"), alleging that MPM Silicones, LLC ("MPM") violated the Clean Air Act ("CAA"); the Solid Waste Disposal Act, as amended by various laws including the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984 (referred to collectively as "RCRA"); implementing regulations and permits issued pursuant to CAA and RCRA; and the approved New York State laws and regulations implementing those federal statutes, in connection with MPM's ownership and/or operation of a rotary kiln incinerator (the "RKI") at a manufacturing facility located at

260 Hudson River Road, Waterford, New York (the "Waterford Facility" or the "Facility") from December 4, 2006 through December 31, 2008.

WHEREAS, the undersigned parties agree that settlement of the Covered Claims identified below is in the public interest.

WHEREAS, at all relevant times regarding the violations resolved in this stipulation, MPM owned or operated the Waterford Facility and held CAA Title V and RCRA Permits for the ownership and operation of the RKI at that Facility.

WHEREAS, the United States acknowledges that MPM found and disclosed the conduct underlying the Covered Claims and cooperated with the United States during the investigation of the Covered Claims.

WHEREAS the term "Covered Claims" is defined as follows:

(1) Federal environmental claims under the CAA and RCRA and the implementing regulations and permits issued pursuant to those statutes, as set forth in the Civil Complaint, including MPM's failure during its ownership and/or operation of the Waterford Facility, which occurred from December 4, 2006 through December 31, 2008, to: (a) comply with the DEC-issued CAA Title V and RCRA Permits by allowing the RKI at the Waterford Facility to emit carbon monoxide in excess of 100 parts per million by volume; (b) continuously operate the RKI's Automatic Waste Feed Cut-Off ("AWFCO") system; (c) continuously monitor the RKI's operating parameters; (d) identify noncompliance with the RKI's Operating and Monitoring Parameters in annual Title V compliance certifications; (e) maintain a functioning AWFCO for the RKI; and (f) cease operating the RKI when operating conditions exceeded limits designated in the CAA Title V and RCRA Permits.

(2) The State of New York's civil and administrative environmental claims against MPM under the CAA and RCRA, and the New York State laws and regulations implementing those federal statutes, and permits issued pursuant to those laws, as set forth in the Civil Complaint, including the conduct occurring from December 4, 2006 through December 31, 2008, referenced in subparagraph 1 above.

(3) Notwithstanding subparagraphs (1) and (2) above, the term "Covered Claims" does not include any claims arising under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), or any claims associated with RCRA corrective action, closure and post closure requirements, or any other claims not expressly stated herein.

WHEREAS, the undersigned parties further agree that the Court's approval of this Stipulation and Order ("Stipulation"), followed by entry of a stipulation of dismissal upon notice by the parties of MPM's timely and complete fulfillment of the terms set forth herein, is an appropriate means of resolving this action.

NOW THEREFORE, without adjudication of any issue of fact or law except as provided below, and with the consent and agreement of the undersigned parties,

IT IS HEREBY STIPULATED AND ORDERED as follows:

1. This Court has jurisdiction over the subject matter of this action pursuant to 42 U.S.C. §§ 6928(a), 7413(b), and 28 U.S.C. §§ 1331, 1345, 1355 and 1367. Venue is proper in the Northern District of New York pursuant to 42 U.S.C. §§ 6928(a), 7413(b), and 28 U.S.C. §§ 1391 and 1395 because the violations alleged herein occurred in this District.

2. The "effective date" of this Stipulation shall be the date that the Stipulation is signed by the Court. The "Due Date" shall be thirty (30) days after the effective date.

3. On or before the "Due Date", MPM shall pay a total civil penalty of One Million, Two Hundred and Fifty Thousand Dollars ($1,250,000.00) (the "Settlement Amount"), of which Six Hundred and Twenty-Five Thousand Dollars ($625,000.00) shall be paid to the United States and Six Hundred and Twenty-Five Thousand Dollars ($625,000.00) shall be paid to the State of New York.

4. MPM shall pay the Settlement Amount, plus any interest accruing from the "Due Date" at the rate established by the Secretary of the Treasury, pursuant to 28 U.S.C. § 1961 ("Interest").

5. Payment of Six Hundred and Twenty-Five Thousand Dollars ($625,000.00) of the Settlement Amount and any Interest shall be made to the United States by Fed Wire Electronic Funds Transfer ("EFT") in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number 2017V00058, and DOJ case number 90-5-2-1-10982/1. Payment to the United States shall be made in accordance with instructions provided to MPM by the Financial Litigation Unit of the United States Attorney's Office for the Northern District of New York upon execution of this Stipulation by the parties. Any EFT received at the DOJ lockbox bank after 11:00 a.m. Eastern Time will be credited on the next business day.

6. Payment of the remaining Six Hundred and Twenty-Five Thousand Dollars ($625,000.00) of the Settlement Amount and any Interest shall be made to the State of New York by wire transfer to the New York State Department of Law, Office of the Attorney General, in accordance with current electronic funds transfer procedures, for deposit into the "New York Attorney General Account," account number 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, at Key Bank, N.A., Albany, NY, bank routing number 021 300 077.

7. Within five (5) business days of each payment, MPM shall provide written notice of payment, along with a statement showing the calculation of Interest included in the payment (if any) and a copy of any transmittal documentation to the United States Attorney's Office for the Northern District of New York, the Department of Justice ("DOJ"), EPA, and the State of New York, at the below addresses. Along with notice of payment, MPM shall submit a written request to jointly enter into a stipulation of dismissal.

As to the United States Attorney, Northern District of New York:

Chief, Civil Division
United States Attorney's Office
Northern District of New York
445 Broadway, Room 218
Albany, NY 12207
USAO File Number 2017V00058

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044-7611
DOJ No. 90-5-2-1-10982/1

As to EPA:

Eric Schaaf
Regional Counsel
Office of Regional Counsel
United States Environmental Protection Agency, Region 2
290 Broadway 17th Floor
New York, NY 10007

As to the State of New York

James C. Woods
Assistant Attorney General

Environmental Protection Bureau
146 Eagle Street
Albany, New York 12224

8. If MPM fails to pay the amount specified in Paragraph 3 above to the United States by the Due Date, MPM shall also pay a stipulated penalty of $1,000 per day to the United States for each day that MPM's full payment is delayed beyond the due date. Likewise, if MPM fails to pay the amount specified in Paragraph 3 above to the State of New York by the Due Date, MPM shall also pay a stipulated penalty of $1,000 per day to the State of New York for each day that MPM's full payment is delayed beyond the due date. The United States and the State of New York, in their sole and unreviewable discretion, may reduce or waive stipulated penalties due under this Stipulation. Stipulated penalties shall be paid consistent with the procedures set forth in paragraphs 5 and 6.

9. Nothing in this Stipulation shall be construed to release MPM or its agents, servants, successors, or assigns from their respective obligations to comply with any applicable Federal, State, or local law, regulation, or permit. Nothing contained herein shall be construed to prevent or limit the United States' or the State of New York's rights to obtain penalties or injunctive relief under the CAA, RCRA, or any other statutes or regulations for alleged violations other than the Covered Claims.

10. All payments made pursuant to this Stipulation are penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), and are not a tax deductible expenditure for purposes of federal law or New York law.

11. MPM shall pay the Settlement Amount and any accrued Interest and penalties out of its own funds and shall not seek indemnification, reimbursement or insurance coverage for the

Settlement Amount from any person, company or entity.

12. Payment by MPM of the Settlement Amount and any accrued Interest and penalties in accordance with this Stipulation shall constitute full settlement and satisfaction of, and release from, the Covered Claims asserted by the United States and the State of New York as against MPM, current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations, divisions; current or former corporate owners; and the corporate successors and assigns of any of them. The United States and the State of New York reserve, and this Stipulation is without prejudice to, all rights against MPM with respect to all matters other than the Covered Claims including, but not limited to, any criminal liability.

13. After receipt of the full Settlement Amount and any accrued Interest and penalties, the United States, the State of New York and MPM shall execute and file with the Court a stipulation of dismissal with prejudice. The Complaint in this action shall be dismissed only upon payment of the entire Settlement Amount, and any other monies due in accordance with this Stipulation.

14. Each party shall bear its own costs and attorneys' fees in this matter. However, if collection proceedings become necessary, MPM shall pay all of the United States' and the State of New York's costs of enforcement, including costs of attorney and support staff time.

15. This Court retains jurisdiction over this matter, including jurisdiction to enforce this Stipulation, until such time as the Court enters a stipulation of dismissal submitted by the parties indicating that payment of all monies due under this Stipulation have been made.

16. MPM waives any affirmative defenses it may have and any objections it may have to jurisdiction and venue regarding this action, and agrees not to challenge the Court's jurisdiction

to enforce or to take any other action to effectuate this Stipulation, and similarly waives formal service of the Complaint and summons as set forth in Rule 4 of the Federal Rules of Civil Procedure.

17. In any subsequent administrative or judicial proceeding initiated by the United States or the State of New York relating to MPM for alleged violations other than the Covered Claims, MPM shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based on any contention that the claims raised by the United States or the State of New York in the subsequent proceeding were or should have been brought in the instant case.

18. Each party certifies that an undersigned representative is fully authorized to enter into the terms and conditions of this Stipulation and to execute and legally bind the respective party.

19. This Stipulation constitutes the final, complete, and exclusive agreement and understanding among the parties relating to this matter. The parties acknowledge that there are no separate agreements or understandings with respect to this matter which have not been set forth in this Stipulation.

20. This Stipulation may not be used as evidence in any litigation between the undersigned parties, except for enforcement of the terms herein.

21. Neither by offering to enter into, nor by entering into this Stipulation does MPM admit to any wrongdoing or any violation of law.

As stipulated and agreed to by the parties, IT IS SO ORDERED this _____day of ______

, ___________________2017.

____
Honorable Lawrence E. Kahn
Senior U.S. District Judge
Northern District of New York

FOR PLAINTIFF THE UNITED STATES OF AMERICA:

JEFFREY H. WOOD
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

GRANT C. JAQUITH
Attorney for the United States
Acting Under Authority Conferred
by 28 U.S.C. § 515

DATE: 4/7/2017 By: Thomas Spina Jr.

THOMAS SPINA, JR.
Bar Role # 102653
Assistant United States Attorney
ADAM KATZ
Assistant United States Attorney
United States Attorney's Office
Northern District of New York
445 Broadway, Room 218
Albany, New York 12207

DATE: 3/31/2017 By: Myles E. Flint, II

MYLES E. FLINT, II
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

DATE: 4/10/17 By: ______________________

ERIC SCHAAF
Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency,
Region 2
290 Broadway,
New York, NY 10007

OF COUNSEL:

GARY H. NURKIN
KARA E. MURPHY
Assistant Regional Counsel

FOR THE STATE OF NEW YORK

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York

LEMUEL SROLOVIC
Bureau Chief

MAUREEN F. LEARY
Toxics Section Chief

DATE: 6/7/17

By: ______________________
JAMES C. WOODS
Assistant Attorney General
Environmental Protection Bureau
The Capitol
Albany, New York 12224

FOR NEW YORK STATE DEPARTMENT OF ENVIROMENTAL CONSERVATION:

BASIL SEGGOS
Commissioner

DATE: 4/11/17 By: ____________________

Thomas S. Berkman
General Counsel
New York State Department of
Environmental Conservation
Albany, NY 12233-1010

FOR MPM SILICONES, LLC

DATE: 4/6/2017

JOHN G. BOSS
President and CEO
MPM Silicones, LLC

DATE: 4/7/2017

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